

2016-2520

**United States Court of Appeals
for the Federal Circuit**

FINJAN, INC.,

Plaintiff-Appellee,

v.

BLUE COAT SYSTEMS, INC.,

Defendant-Appellant.

*Appeal from the United States District Court for the Northern District
of California in Case No. 13-CV-03999, Judge Beth Labson Freeman*

**MOTION FOR EXTENSION OF TIME TO FILE
PRINCIPAL BRIEF**

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September 21, 2016

*Attorneys for Defendant-Appellant
Blue Coat Systems, Inc.*

CERTIFICATE OF INTEREST

Pursuant to Federal Circuit Rule 47.4(a)(1) and Federal Rule of Appellate Procedure 26.1, counsel for Defendant-Appellant Blue Coat Systems, Inc. certifies the following:

1. The full name of every party represented by us is:

Blue Coat Systems, Inc.
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by us is:
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party represented by us are:

Symantec Corporation
4. The names of all law firms and the partners or associates that appeared for the party now represented by me in the trial court or agency or are expected to appear in this court are:

Wilson Sonsini Goodrich & Rosati: Edward G. Poplawski, Brian Lam, Christopher Don Mays, Gina H. Cremona, Laura Elizabeth Evans, Olivia M. Kim, Paul Morley McAdams, S. Ferrell Alman, Jr., Vera M. Elson

Durie Tangri LLP: Mark A. Lemley, Clement S. Roberts, Sonal N. Mehta, Sonali D. Maitra

DATED: September 21, 2016

DURIE TANGRI LLP

By /s/ Mark A. Lemley

*Attorneys for Defendant-Appellant
Blue Coat Systems, Inc.*

Defendant-Appellant Blue Coat Systems, Inc. (“Appellant”) respectfully moves for a 60-day extension of time to file its principal brief, extending the deadline from October 21, 2016 to December 20, 2016. No previous extensions for this brief have been sought or granted.

Good cause justifies the requested extension. As set forth in the accompanying Declaration of Mark A. Lemley (“Lemley Decl.”), this is a complex appeal. At issue is an extensive district court record involving litigation on six patents-in-suit (four of which will be at issue on appeal) and culminating in a 10+ day jury trial and a bench trial on non-jury issues. Lemley Decl. ¶ 4. The issues that must be considered on appeal are expected to relate generally to claim construction, (non)infringement and (in)validity on multiple patents involving multiple technologies, damages, non-jury issues including prosecution history estoppel and laches, and evidentiary rulings pretrial and during trial. *Id.* Appellate counsel have just been retained and seek the additional time to familiarize themselves with the district court record, identify the issues that will be pursued, and prepare Appellant’s briefing so as to be most helpful for the Court. *Id.* The additional time is also necessary because of other obligations of Appellant’s counsel on other matters, including appeals before this Court and a trial scheduled to commence on October 28, 2016 involving one of Appellant’s counsel. Lemley Decl. ¶ 5.

Importantly, the requested extension of time will not prejudice Plaintiff-Appellee Finjan, Inc. (“Appellee”). Although trial in this matter took place in 2015, the district court did not resolve post-trial motions until July 18, 2016. Lemley Decl. ¶ 6. Because Appellee is in the business of licensing patents and does not compete with Appellant, there is no prejudice to Appellee from a modest delay in resolution of this appeal. *Id.* Moreover, the parties stipulated, and the district court approved, a supersedeas bond in the amount of \$40,086,172.78 (which includes the judgment of \$39,528,487.00 in lump sum damages award; \$82,207.83 in costs; and \$114,684.71 in pre-judgment interest; as well as \$360,793.24 in post-judgment interest through an expected appeal decision date of September 26, 2017—over one year from now). *Id.*

Counsel for Appellee has informed counsel for Appellant that Appellee opposes any extension of time. Lemley Decl. ¶ 7.

Dated: September 14, 2016

Respectfully submitted,

DURIE TANGRI LLP

By: /s/ Mark A. Lemley

*Attorneys for Defendant-Appellant
Blue Coat Systems, Inc.*

DECLARATION OF MARK A. LEMLEY

I, Mark A. Lemley, hereby declare as follows:

1. I am a partner at Durie Tangri LLP. I am principal counsel for Appellant Blue Coat Systems, Inc. in this appeal. I am admitted to practice law in the State of California. I submit this declaration pursuant to Federal Circuit Rule 26(b) in support of Appellant's Motion for Extension of Time to File its Principal Brief seeking a 60-day extension of time. I make this declaration as required by Circuit Rule 26(b)(5). I have knowledge of the facts set forth below and, if called as a witness, could and would testify to them.

2. The principal brief of Appellant Blue Coat Systems, Inc. ("Appellant") is due October 21, 2016.

3. Appellants have not previously sought an extension for their responsive brief.

4. There is good cause for a 60-day extension of time to file Appellant's principal brief. This is a complex appeal. At issue is an extensive district court record involving litigation on six patents-in-suit (four of which will be at issue on appeal) and culminating in a 10+ day jury trial and a bench trial on non-jury issues. The issues that must be considered on appeal are expected to relate generally to claim construction, (non)infringement and (in)validity on multiple patents involving multiple technologies, damages, non-jury issues including prosecution

history estoppel and laches, and evidentiary rulings pretrial and during trial. My firm has just been retained and seeks the additional time to familiarize ourselves with the district court record, identify the issues that will be pursued, and prepare Appellant's briefing so as to be most helpful for the Court.

5. The additional time is also necessary because of other obligations that I and my co-counsel at Durie Tangri LLP have on other matters. *See, e.g., Atlas IP, LLC v. Commonwealth Edison Co.*, No. 2016-2203 (docketed June 10, 2016) (principal brief due September 23, 2016); *Impulse Technology Ltd. v. Microsoft Corporation*, No. 2016-01015 (oral argument scheduled for November 4, 2016, to be argued by my co-counsel Sonal N. Mehta). In addition, my co-counsel Sonali D. Maitra is preparing for a trial that is scheduled to commence on October 28, 2016.

6. The requested extension of time will not prejudice Plaintiff-Appellee Finjan, Inc. Although trial in this matter took place in 2015, the district court did not resolve post-trial motions until July 18, 2016. Because Appellee is in the business of licensing patents and does not compete with Appellant, there is no prejudice to Appellee from a modest delay in resolution of this appeal. Moreover, the parties stipulated, and the district court approved, a supersedeas bond in the amount of \$40,086,172.78 (which includes the judgment of \$39,528,487.00 in lump sum damages award; \$82,207.83 in costs; and \$114,684.71 in pre-judgment

interest; as well as \$360,793.24 in post-judgment interest through an expected appeal decision date of September 26, 2017—over one year from now).

7. Counsel for Appellant have consulted with counsel for Appellee Finjan, Inc. regarding this extension request. Counsel for Appellee has advised that Appellee will oppose any extension of time.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: September 21, 2016

/s/ Mark A. Lemley

Mark A. Lemley

**[PROPOSED] ORDER GRANTING APPELLANT’S MOTION FOR
EXTENSION OF TIME TO FILE PRINCIPAL BRIEF**

Appellant, having moved for a 60-day extension of time to file Appellant’s principal brief (“Appellant’s Brief”), and good cause therefore being shown: IT IS HEREBY ORDERED that the motion be GRANTED. Appellant’s Brief is now due on or before December 20, 2016.

FOR THE COURT

CERTIFICATE OF SERVICE

I hereby certify that, on this 21th day of September, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and served, via email, a true and correct copy of the same to the following:

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/s/ Mark A. Lemley

MARK A. LEMLEY